

**Notice of Allowability**

Application No.

09/942,935

Examiner

Kathleen M. Kerr

Applicant(s)

BATHE ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/12/05.
2. ☒ The allowed claim(s) is/are 5,9,12,31-37 and 44-50.
3. ☒ The drawings filed on 31 August 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_



Kathleen M Kerr  
Primary Examiner  
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## **DETAILED ACTION**

### ***Application Status***

1. In response to the previous Office action, a non-final rejection (mailed on January 13, 2005), Applicants filed a response and amendment received on April 12, 2005. Said amendment cancelled Claims 13-30, amended Claims 32, 33, 34, 37 and added new Claims 45-50. Thus, Claims 5, 9, 12, 31-39, and 45-50 are pending in the instant Office action.

### ***Election/Rejoinder***

2. Newly submitted claims 45-50 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: see original Group II from restriction requirement mailed June 4, 2003.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 45-50 could be withdrawn from consideration as being directed to a non-elected invention. See 37 C.F.R. § 1.142(b) and M.P.E.P. § 821.03.

Claims 5, 9, and 31 are directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claims 45-50, directed to the process of making or using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Claims 45-50 are hereby rejoined and fully examined for patentability under 37 C.F.R. § 1.104.

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Since all claims previously withdrawn from consideration under 37 C.F.R. § 1.142 have been rejoined, the restriction requirement made in the Office action mailed on June 4, 2003 is hereby withdrawn.

Claims 5, 9, 12, 31-39, and 45-50 are pending in the instant Office action and will be examined herein.

***Priority***

3. As previously noted, the instant application is granted the benefit of priority for the foreign applications 100 43 337.5 and 101 36 984.0 filed in Germany on September 2, 2000 and July 28, 2001, respectively as requested in the declaration. Receipt is acknowledged of papers submitted under 35 U.S.C. § 119(a)-(d), which papers have been placed of record in the file. Translations of said priority documents have been received.

***Withdrawn - Claim Objections***

4. Previous rejection of Claims 32 and 33 to under 37 C.F.R. § 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim is withdrawn by virtue of Applicant's amendment.

5. Previous rejection of Claims 34 and 37 to under 37 C.F.R. § 1.75(c) as being in improper form is withdrawn by virtue of Applicant's amendment.

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### EXAMINER'S AMENDMENT

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Brett Nelson on June 16, 2005.

### *Amendments to the Claims*

7. The claims been amended as follows:

a) Cancel Claims 38 and 39.

b) Rewrite Claim 45 as follows:

---45. A method for the production of L-amino acids using coryneform bacteria comprising:  
fermenting coryneform bacteria comprising an overexpressed sigM  
polynucleotide wherein said polynucleotide comprises a nucleotide sequence  
according to any one of Claims 5, 9, or 31,  
wherein said overexpression is achieved by increasing the copy number of said  
polynucleotide or by operably linking said polynucleotide to a promoter.

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c) Rewrite Claim 48 as follows:

---48. The method as claimed in claim 45, wherein the bacteria comprise, at the same time, one or more *Corynebacterium glutamicum* genes which are overexpressed, wherein the one or more genes is/are selected from the group consisting of:

- the dapA gene coding for dihydrodipicolinate synthase,
- the gap gene coding for glyceraldehyde-3-phosphate dehydrogenase,
- the tpi gene coding for triose phosphate isomerase,
- the pgk gene coding for 3-phosphoglycerate kinase,
- the zwf gene coding for glucose-6-phosphate dehydrogenase,
- the pyc gene coding for pyruvate carboxylase,
- the mqo gene coding for malate quinone oxidoreductase,
- the lysC gene coding for feed-back resistant aspartate kinase,
- the lysE gene coding for lysine export protein,
- the hom gene coding for homoserine dehydrogenase,
- the ilvA gene coding for threonine dehydratase or the ilvA(Fbr) allele coding for feed-back resistant threonine dehydratase,
- the ilvBN gene coding for acetohydroxy acid synthase,
- the ilvD gene coding for dihydroxy acid hydratase, and
- the zwal gene coding for the Zwal protein.---

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d) Rewrite Claim 49 as follows:

---49. The method as claimed in claim 45, wherein the bacteria are *Corynebacterium glutamicum* and comprise, at the same time, one or more endogenous *Corynebacterium glutamicum* genes which are eliminated, wherein the one or more genes is/are selected from the group consisting of:

the pck gene coding for phosphoenol pyruvate,

the pgi gene coding for glucose-6-phosphate isomerase,

the poxB gene coding for pyruvate oxidase, and

the zwa2 gene coding for the Zwa2 protein.---

### ***Conclusion***

8. Claims 5, 9, 12, 31-37, and 44-50, as amended by Applicant or above by the Examiner's amendment, are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M. Kerr whose telephone number is (571) 272-0931.

The examiner can normally be reached on Monday through Friday, from 9:00am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathupura Achutamurthy can be reached on (571) 272-0928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen M Kerr  
Primary Examiner  
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June 19, 2005